IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA
Plaintiff
vs
33.92356 ACRES OF LAND MORE OR LESS, SITUATED IN VEGA BAJA, COMMONWEALTH OF PUERTO RICO, AND JUAN PIZA BLONDET, AND ANY UNKNOWN OWNERS
Defendants

CIVIL 98-1664CCC
CIVIL 98-2344CCC

O R D E R

The case before us is an action for expropriation of a parcel of land used by the Federal Aviation Administration for a beacon antennae and control room for en-route aviation navigation in the Caribbean area. On June 8, 1998 the government filed this Complaint in Condemnation. Judge Gilberto Gierbolini held a hearing on October 26, 1999to determine the method to be used for appraising the value of the condemned portion of the land.

The government supports the most commonly used method, known as the "before and after method" by which the value of the entire parcel is determined before the expropriation, and then the remaining parcel is reevaluated after the condemned portion is removed. Defendant Juan Pizá-Blondet, owner of the property, wants the condemned portion, which is at the center of the larger parcel, valued independently, because it was segregated on December 26, 1997. We note that Pizá-Blondet segregated the portion after his dispute with the government arose over the amount of rent to be paid.

In order to use the before-and-after method, plaintiffs must demonstrate a unity between the separate parcels: (1) unity of ownership, which we have here; (2) contiguity,[1] which we have here; and (3) unity of use.

[1] Non-contiguous parcel can have unity, see Baetjer v. United States, 143 F2d. 391 (1st Cir. 1944), but that is not an issue here.

Most of the hearing was dedicated to establishing the highest and best use of the property, that is, the use which would give the land the highest value. Plaintiff's witness testified that, given the nature of the parcel, ecological and conservation consideration, the existing zoning and other regulations, the highest and best use of the land would be for passive recreation. Defendant Pizá-Blondet, who presented no witnesses,[2] presented documentary evidence and cross examined plaintiff's witness on defendant's theory that, notwithstanding the conservation and ecological considerations, smaller, similar areas had been re-zoned and permits issued for development. He presented evidence that one project within the remnant portion was already under construction, that he had plans for other projects and that he had applied for permits.

A proposed "use" requires a showing of reasonable probability that the land is both physically adaptable for such use and that there is a need or demand for such use in the reasonably near future. United States v. 341.45 Acres of Land, 633 F.3d 108, 111 (8th Cir. 1980). The judge must screen the evidence to determine its credibility that the property is adaptable and that there is a need or demand for such use in the reasonably near future. Once the landowner has produced credible evidence that a potential use is reasonably practicable and reasonably probable within the near future, it is for the jury to decide whether the property's suitability for this enhances its market value. U.S. v. 7.92 Acres of Land, 769 F2d 4, 10 1st Cir. 1985). Additionally, the potential for that use must not be invalid as a matter of law. Id.

Over six years have passed since the government condemned the portion of the parcel, which is a reasonable length of time for the near future in which plaintiff could demonstrate that his proposed use is probable. Therefore, defendant Pizá-Bondet shall produce, for the Court's

[2]Pizá-Blondet, who had previously announced two expert witnesses, brought three to the hearing. Because no expert report had been furnished to the plaintiff for any of the witnesses, and the third witness had not even been announced, Judge Gierbolini did not permit any of them to testify.

review, no later than Tuesday, December 7, 2004, copies of all permits and zoning variances he has obtained, photographs of all projects on which clearing or construction has begun or has been completed, a map of where on the parcel these projects exist or areas for which the projects have been approved, and any other evidence he has to support his contention that highest and best use for the entire parcel would be for medium density housing.

SO ORDERED.

At San Juan, Puerto Rico, on November 22, 2004.

S/CARMEN CONSUELO CEREZO
United States District Judge